

P-999/CI-93-12 ORDER INITIATING INVESTIGATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of a Commission-
Initiated Investigation into
Bypass of Existing Local
Transport Facilities

ISSUE DATE: January 22, 1993

DOCKET NO. P-999/CI-93-12

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PROCEDURAL HISTORY

On October 10, 1991, the Minnesota Equal Access Corporation (MIEAC) made its compliance filing in Docket No. P-3007/NA-89-76.

On May 29, 1992, U S West Communications, Inc. (USWC) filed Supplemental Comments raising its concern regarding MIEAC's transport facilities.

On June 17, 1992, the Minnesota Department of Public Service (the Department) filed Supplemental Comments. The Department stated that it shared USWC's concerns and recommended that the Commission initiate an investigation into the establishment of the statewide transport facilities network and the potential for bypass of the existing local transport facilities.

On June 18, 1992, MIEAC filed a Reply to Supplemental Comments arguing that USWC's comments regarding bypass should be disregarded because the focus of the proceeding was the establishment of MIEAC's final rates.

On December 22, 1992, the Commission met to consider MIEAC's compliance filing.¹ In the course of its deliberations, the Commission addressed the concern raised by USWC and the Department regarding bypass of USWC transport facilities.

¹ The Commission addressed the compliance-related issues in a separate Order: ORDER APPROVING COMPLIANCE FILING AND REQUIRING ADDITIONAL FILINGS, Docket No. P-3007/NA-89-76 (January 21, 1993).

FINDINGS AND CONCLUSIONS

Under the current toll network configuration, USWC and the independent local exchange companies (ILECs) each own portions of the local transport facilities and USWC owns the access tandems. USWC realizes a substantial amount of revenue from this local transport service. In the MIEAC system, the Minnesota Equal Access Facilities Corporation (MEAFCO) owns the access tandem and leases it to MIEAC. This presents an opportunity for ILECs participating in the MIEAC system (PILECs) to build transport facilities directly from their end offices to the toll transfer points (TTPs), thereby bypassing USWC's transport facilities.

In its previous Orders, the Commission has expressed its concern regarding the potential disruption of current local transport arrangements. In its January 10, 1991 ORDER GRANTING CERTIFICATE OF AUTHORITY TO PROVIDE EQUAL ACCESS SERVICE in Docket No. P-3007/NA-89-76 at page 24, the Commission recognized that despite MIEAC's representations that it did not intend to disrupt local transport arrangements, its system would provide PILECs an incentive to provide all of the local transport service and receive all of the revenue therefrom by bypassing USWC transport facilities. The Commission stated:

It may be in the PILECs' interest to do so [bypass USWC transport facilities], but before approving such a major change in the telecommunications network, the Commission will need to examine the impact that such bypass would have upon the public interest. In so doing, the Commission would consider such factors as the impact upon USWC ratepayers and determine whether the bypass would result in an unnecessary duplication of facilities. Ibid at 24.

The Commission concluded that to guard against this potential development occurring without prior authorization from the Commission it would require MIEAC to include in its contracts with PILECs a provision prohibiting PILECs from effecting such a bypass without first securing Commission review and approval.

On reconsideration, MIEAC urged the Commission to abandon this condition. The Commission refused, restating its concern and modifying its requirement only slightly. In its May 20, 1991 ORDER AFTER RECONSIDERATION in Docket No. P-3007/NA-89-76, the Commission amended its Order to require MIEAC to include in its contracts with PILECs a provision that prohibits PILECs from affecting a bypass of existing local transport facilities to reach MIEAC or a MIEAC affiliate without first securing Commission approval unless all affected telephone companies, including USWC, agree to such bypass. ORDER AFTER RECONSIDERATION at page 10.

Subsequent to the cited Order and in connection with MIEAC's compliance filing, USWC filed comments alleging that MIEAC has constructed an oversized, fully equipped network that could be used to encourage bypass of the existing jointly provided local transport network. USWC warned that bypass is difficult to detect and could be occurring without Commission knowledge. USWC claimed that the ILECs who own MIEAC have tried to bypass or created the potential for bypass of USWC's existing local transport facilities.

The Department also noted that bypass of existing facilities, duplication of facilities, infringement of service territories, and unauthorized provision of facilities and services may be occurring without the Commission being informed or Commission approval being granted. The Department recommended the Commission initiate an investigation into the establishment of transport facilities statewide.

MIEAC argued that USWC's comments were irrelevant to what MIEAC viewed as the primary issue before the Commission at that time in Docket No. P-3007/NA-89-76: MIEAC's final access rates. MIEAC also argued that USWC's comments were another attempt to blur the distinction between MIEAC's network [facilities between the TTPs and the centralized equal access (CEA) switch] and the local transport facilities between PILEC end offices and the TTPs. MIEAC provided nothing to dispel concern about the potential or reality of bypass.

The question whether the Commission's concerns about bypass are being honored or circumvented is important. Significant issues affecting the public interest, including the potential negative impact upon local ratepayers, must be resolved by the Commission following full participation by affected parties before any bypass is permitted. The Commission has authority under Minn. Stat. § 237.081 (1990) to conduct investigations of any matter relating to any telephone service. The Commission believes that an investigation would provide an appropriate means of addressing this matter.

Accordingly, the Commission will initiate an investigation into the establishment of alternatives to the existing transport facilities network, determine the level of bypass that is occurring or may occur through use of such alternatives, and develop an appropriate regulatory response to these circumstances.

The Commission will direct the Department to conduct the investigation and file a report and recommendations regarding the matter within 180 days of this Order. In its report, the Department shall provide information in response to the following questions:

A. Transport Services at Present

1. Which LECs are currently providing transport services in Minnesota?
2. Which LECs provide transport services outside of their local exchange territories?
3. Have these companies been authorized by the Commission to provide transport service outside of their local exchange territories?
4. Have LECs used or established affiliates to provide transport services?
5. Are LECs forcing the interexchange carriers (IXCs) to use the LECs transport to reach the LEC end-offices?
6. Are LECs providing transport services in conformance with Minn. Stat. § 237.16, subd. 4 (1990)?
7. Are PILECs abiding by the provision of their contract with MIEAC, inserted pursuant to the Commission's January 10, 1990 Order in Docket No. P-3007/NA-89-76, prohibiting them from effecting bypass of USWC's local transport facilities without first securing Commission review and approval?

B. Regulatory Policy Development of the Transport Network

1. What regulatory procedures should be taken by a company prior to installing any new transport facility?
2. When is it acceptable for a LEC to bypass existing transport facilities of another carrier?
3. Should the IXC or the LEC determine the transport route to be used to reach the LEC end-office?
4. How should the transport network be developed in the future to ensure that the services made available to customers are at the lowest reasonable cost?
5. Can competition serve to improve service quality and reduce price?
6. Can we have too much transport facility?
7. Who should own the transport network in the future and how does that differ from the current ownership?
8. All related issues associated with the appropriate procedures and protection of the intrastate transport network.

The Department's report shall include any other information that it deems helpful to the Commission in understanding and addressing this matter. Parties interested in responding to the Department's report and recommendations shall have 60 days to do so.

ORDER

1. An investigation of the establishment of alternatives to the existing jointly maintained local transport facilities network is hereby initiated.
2. The Minnesota Department of Public Services (the Department) shall conduct the investigation and shall file its report and recommendations with the Commission, including information in response to the questions listed on pages 3-4 of this Order within 180 days of this Order.
3. Interested parties shall have 60 days from the filing of the Department's report and recommendations to file any responses with the Commission.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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